



COUNTY OF SAN DIEGO

AGENDA ITEM

BOARD OF SUPERVISORS

GREG COX
First District

DIANNE JACOB
Second District

PAM SLATER-PRICE
Third District

RON ROBERTS
Fourth District

BILL HORN
Fifth District

8

DATE: June 19, 2007

TO: Board of Supervisors

SUBJECT: REVIEW OF SDCERA BOARD OF RETIREMENT ACTIONS REGARDING RETIREE HEALTH CARE BENEFITS, AND CONSIDERATION OF COUNTY RETIREMENT FUNDING PROPOSALS (Districts: All)

SUMMARY:

Overview

On December 5, 2006, your Board adopted Resolution 06-229 requesting the SDCERA Board of Retirement (BOR) to take certain actions to reduce the cost of retiree health benefits in light of the new Governmental Accounting Standards Board ("GASB") Statement 45 rules regarding Other Post-Employment Benefits (OPEB).

On May 3, 2007, the BOR adopted several actions involving ancillary retirement benefits, including actions to reduce the costs of retiree health benefits. (See Attachment A for summary of BOR actions.) As a result, the estimated health benefit liability has been reduced by \$400 million, and the annual required contribution has been reduced by \$44 million, creating an estimated savings of more than \$1.2 billion over a twenty-year period. In addition, the BOR adopted an Excess Earnings Policy. This new Policy ensures that the retirement fund will be credited with all excess earnings up until the funded ratio of the retirement fund reaches 90%. This could result in substantial savings to taxpayers because it will reduce the unfunded liability of the retirement fund. The BOR also established a new taxable pension supplement for Tier A retirees, and approved the pre-funding of the STAR-COLA benefit. Both of these benefits are non-vested, ancillary benefits controlled and authorized under the sole authority of the BOR. Under State law, your Board has no control over these two ancillary benefits.

Finally, the BOR made its May 3 actions contingent on the County satisfying a specified condition. Since June 2000, pursuant to Resolutions adopted by your Board and the BOR, the County has designated a portion of its annual retirement fund contribution to be placed in the 401(h) health benefit account for SDCERA's use to pay retirees a non-taxable health benefit allowance. In turn, SDCERA credited the County Contribution Reserve with excess earnings to reimburse the County for its contribution into the 401(h) account. The BOR contingency, mentioned above, provides for the County to contribute to the 401(h) account, but without SDCERA crediting the County Contribution Reserve with excess earnings.

This letter requests your Board to consider the BOR's May 3 actions, and to take any appropriate actions, including whether to approve the retirement funding proposals described in the recommendations below.

**SUBJECT: REVIEW OF SDCERA BOARD OF RETIREMENT ACTIONS REGARDING
RETIREE HEALTH CARE BENEFITS, AND CONSIDERATION OF COUNTY
RETIREMENT FUNDING PROPOSALS (Districts: All)**

8

Recommendations

CHIEF ADMINISTRATIVE OFFICER:

1. Receive and review the May 3, 2007 actions of the SDCERA Board of Retirement, including the actions concerning retiree health benefits and the adoption of an Excess Earnings Policy, and take any appropriate actions.
2. Pursuant to the BOR contingency described above, determine whether or not the County should make an annual required contribution (ARC) to the 401(h) account for the Tier I and II retiree health care OPEB, without SDCERA crediting the County Contribution Reserve, by approving one of the following options:
 - a. Do not approve Amended Resolution 06-229.
 - b. Approve Amended Resolution 06-229 authorizing the Chief Financial Officer to designate County contributions to be made to the 401(h) account as the ARC for Tier I and II retiree health benefit costs without SDCERA crediting the County Contribution Reserve with excess earnings, contingent upon SDCERA applying, on a continuing basis, its Excess Earnings Policy in accordance with its action of May 3, 2007. If Amended Resolution 06-229 is adopted, approve the following actions:
 - (1) Rescind the Board's action of April 24, 2007 (12) that directed the CAO to continue to utilize the FY 2004-05 retirement contribution rates for FY 2007-08 and instead direct the CAO to make retirement contributions for FY 2007-08 at the rates recommended by SDCERA's actuary.
 - (2) Direct that the estimated savings of \$43 million realized by reducing the FY 2007-08 retirement rates to those recommended by SDCERA's actuary be redirected to paying the ARC for the Tier I and II retiree health care OPEB and to reducing outstanding balances on the County's pension obligation bonds.
 - (3) Refer to budget deliberations the addition of appropriations of up to \$18 million in the Pension Obligation Bond Debt Service Fund to pay down outstanding balances on the County's pension obligation bonds. The actual amount of the appropriation increase will be the difference between the total savings referred to in recommendation 2.b.(2) above and the actuarially determined retiree health care benefits ARC to be calculated by SDCERA's actuary.
 - (4) Authorize the Chief Financial Officer to take the actions necessary to pay down a portion of the County's pension obligation bonds, based upon feasibility and current market conditions.
3. Note for the official record that Board members, whose retirement system membership makes them eligible upon retirement for retiree health benefits, will have such eligibility terminated upon the adoption of the Amended Resolution. In addition, all Tier A members, including Board members, will be eligible to receive the taxable supplemental pension benefit if it is still available upon their retirement.

**SUBJECT: REVIEW OF SDCERA BOARD OF RETIREMENT ACTIONS REGARDING
RETIREE HEALTH CARE BENEFITS, AND CONSIDERATION OF COUNTY
RETIREMENT FUNDING PROPOSALS (Districts: All)**

Fiscal Impact

The ARC for retiree health benefits provided to Tier I and II members only is estimated to be \$26 million a year, commencing in FY 2007-08, and would be mitigated by the new Excess Earnings Policy adopted by the BOR. The calculation of the actual ARC for retiree health benefits is expected to be completed by SDCERA's actuary within the next 60 days. Appropriations of approximately \$43 million are already included in the 2007-08 Proposed Operational Plan for contributions in excess of those required for the vested pension benefit. If recommendation 2.b. is approved, no additional appropriations are necessary in departmental budgets as the \$43 million would be redirected towards the ARC for retiree health benefits, with the remaining amount being shifted as payments to the Pension Obligation Bond Debt Service Fund to pay down a portion of the outstanding pension obligation bonds. It would, however, be necessary to increase the appropriations in the Pension Obligation Bond Debt Service Fund in order to reflect the additional payments from departments and accomplish the debt reduction.

Business Impact Statement

N/A

Advisory Board Statement

N/A

BACKGROUND:

Actions by Board of Retirement on May 3, 2007

Retiree Health Benefit:

The BOR took actions that essentially accomplished the objectives of your Board's Resolution 06-229, with the exception of the crediting of the County Contribution Reserve with excess earnings for any ARC the County should make to the 401(h) account for Tier I and II members. Should your Board determine that the County should make the contribution to the 401(h) account without SDCERA crediting the excess earnings to the County Contribution Reserve, your Resolution 06-229 will require an amendment.

The savings resulting from actions by both your Board and the Board of Retirement by limiting the retiree health care benefit to only Tier I and II members are estimated to be a \$400 million reduction in the Actuarial Accrued Liability, as well as a \$44 million reduction in the ARC for Fiscal Year 2007-08. Over a twenty-year period, the savings from the reduced ARC payments are estimated to be more than \$1.2 billion.

SUBJECT: REVIEW OF SDCERA BOARD OF RETIREMENT ACTIONS REGARDING RETIREE HEALTH CARE BENEFITS, AND CONSIDERATION OF COUNTY RETIREMENT FUNDING PROPOSALS (Districts: All)

Excess Earnings Policy:

In addition to adopting the changes to the retiree health care benefits, the BOR also adopted an Excess Earnings Policy effective July 1, 2007 which directs all excess earnings to the vested pension fund to pay down the unfunded liability up to the point that the funded ratio reaches 90%. Thereafter, the distribution of excess earnings would be as follows:

Funded Ratio	Unfunded Liability (vested pension fund)	Contingency Reserve	Discretion of Board of Retirement
90 – 100%	75%	0%	25%
100 – 115%	0%	50%	50%
Over 115%	0%	0%	100%

As a result of the adoption of this new Excess Earnings Policy, the majority of the deferred excess earnings of \$722 million as of June 30, 2006 will be directed to reduce the Unfunded Actuarial Accrued Liability (UAAL) of the vested pension fund, as the funded ratio calculated by the SDCERA's actuary as of that date was 83.6%. This significantly enhances the strength of the vested pension fund by ensuring that these earnings are not used for other ancillary benefits until such time the funded ratio is over 90%.

Taxable Pension Supplement for Tier A Retirees:

The BOR also adopted a policy to provide a taxable, supplemental pension benefit to Tier A Retirees. The benefit follows similar eligibility requirements as those for the retiree health care benefit, but is provided to all Tier A retirees on a taxable basis. Pursuant to State law, this ancillary benefit is granted under the sole authority of the BOR, of which the County Board of Supervisors has no legislative authority to change or repeal. The supplements will be paid from the existing Health Benefit Reserve, which was previously funded through excess earnings. The balance of this Reserve is estimated to be approximately \$165 million at June 30, 2007, and is projected to provide benefits to Tier A members for ten years. As this taxable pension supplement is not considered an "Other Post Employment Benefit" as defined by GASB, there is no GASB 45 liability associated with this supplement.

STAR COLA:

Another action taken by the BOR on May 3 was to pre-fund the ancillary STAR COLA benefit. In effect, this action closes the group to retirees currently receiving the benefit and sets aside the required funds to pay the benefit. This ancillary benefit is also granted under the sole authority of the BOR, of which the County Board of Supervisors has no legislative authority to change or repeal. SDCERA's actuary has determined the amount of the liability related to the STAR COLA benefit to be \$70.5 million. The Board of Retirement voted to fund this liability using the existing STAR COLA Reserve of approximately \$44 million, with the remaining \$26.5 million to be funded with excess earnings.

SUBJECT: REVIEW OF SDCERA BOARD OF RETIREMENT ACTIONS REGARDING RETIREE HEALTH CARE BENEFITS, AND CONSIDERATION OF COUNTY RETIREMENT FUNDING PROPOSALS (Districts: All)

ADDITIONAL BACKGROUND:

Retiree Health Insurance Benefits Provided by SDCERA

In addition to the vested pension benefits that the BOR pays to retired employees, SDCERA also makes available a non-vested health insurance program to retired members, their dependents, surviving spouses and registered domestic partners. Vested, or guaranteed benefits, are set by the County and guaranteed to employees upon their hiring. As such, SDCERA is obligated to continue making these payments.

As non-vested, or non-guaranteed benefits, payments for health insurance premiums are awarded to retirees at the discretion of the BOR. The health insurance benefits consist generally of group healthcare insurance coverage, both medical and dental, and a monetary contribution toward a portion of the group healthcare insurance premium charged to each eligible retired member who enrolls for the health insurance coverage.

In 1974, SDCERA began to pay, on a discretionary, non-vested basis, health care benefits for retired members solely from statutorily defined “excess earnings,” subject to eligibility requirements and maximum payment amounts as determined by the BOR.

In response to requirements contained in the United States Internal Revenue Code, on June 20, 2000 (24) the Board of Supervisors adopted a resolution which made Government Code section 31592.4 operative in San Diego County and facilitated the funding of the 401(h) account, which was established by the BOR to fund health benefits pursuant to Internal Revenue code section 401(h). Government Code section 31592.4 allows the County’s contribution to the 401(h) health account to be mitigated by investment earnings of the Retirement Fund.

Because these non-vested retiree health benefits can be reduced or eliminated at any time, there has been no requirement to pre-fund the cost of these benefits into future years. If available resources to fund such non-vested retiree health insurance benefits run low, the proposed solution simply has been to reduce or eliminate the benefits since the program is a pay-as-you-go system based on earnings from the investments of the retirement fund, with no guarantee of future benefits.

New Nationwide Rule to Financially Account for Cost of Retiree Health Benefits

Recent major changes in nationwide accounting standards issued by the Governmental Accounting Standards Board (GASB), which are set forth in GASB Statement 45, now require that public employers must include in their financial statements any liabilities (i.e., the unfunded costs to provide these benefits now and in future years) resulting from Other Post Employment Benefits (OPEBs), such as the retiree health insurance benefits provided by SDCERA, effective in fiscal years beginning after December 2006. This new change required by GASB means that even though the SDCERA non-vested retiree health insurance benefits can be reduced or eliminated at any time, the County, commencing Fiscal Year 2007-08, must account for the costs of these benefits as if they would continue to be provided well into the future for the retirees. These changes also require the County to report an additional liability in its financial statements

SUBJECT: REVIEW OF SDCERA BOARD OF RETIREMENT ACTIONS REGARDING RETIREE HEALTH CARE BENEFITS, AND CONSIDERATION OF COUNTY RETIREMENT FUNDING PROPOSALS (Districts: All)

beginning in Fiscal Year 2007-08, to the extent the County does not fund its ARC for retiree health benefits, as determined by an actuary.

Adoption of Resolution 06-229

The GASB requirements brought to the forefront the serious fiscal impact that the County of San Diego would have faced if SDCERA continued to subsidize retiree health benefits for all eligible Tier I, Tier II and Tier A members. As such, your Board adopted Resolution 06-229 that urged SDCERA to eliminate the subsidy that is paid toward the group health insurance premium for all eligible Tier A safety and general members, but continue such payment on a non-vested basis to eligible Tier I and II members, both safety and general, and maintain the other existing health insurance benefit qualifications and maximum payments such that they create a liability no greater than the current levels for those Tiers. At the time that Resolution was adopted, it was estimated that the Actuarial Accrued Liability was \$640 million, with an estimated ARC starting at \$60-70 million a year and would continue to increase. When added over a twenty-year period, the amount of the County's ARC payments was estimated to be \$1.8 billion. The Resolution also had a provision that if SDCERA did not adopt a policy as described above by June 30, 2007, the Chief Financial Officer would not designate any portion of the County's pension contribution to be placed in the 401(h) account, thus eliminating retiree health benefit payments for all retirees.

Funding the Annual Required Contribution for Retiree Health Care Benefit and Pay Down of Pension Obligation Bonds

On April 24, 2007 (12) your Board directed the CAO to pay employer retirement contribution rates to SDCERA that exceeded those recommended by SDCERA's actuary. Those higher rates are expected to generate approximately \$43 million in contributions above the required level. In light of the new Excess Earnings Policy adopted by the BOR and the strength of the retirement fund, it would be possible, should your Board approve recommendation 2.b., to fund the ARC for the retiree health care benefits during FY 2007-08 by redirecting amounts previously designated to make additional contributions towards the vested pension benefit to the ARC for the retiree health care benefits. Although the SDCERA actuary has not yet determined the final ARC for retiree health care benefits for FY 2007-08, that amount is estimated to be approximately \$26 million. The remainder of the \$43 million could be redirected to pay down outstanding balances on the County's pension obligation bonds. The actual amounts to be redirected to both the retiree health care benefits and the pension obligation bonds would be determined at the completion of the actuarial valuation of the retiree health care benefits by the SDCERA's actuary. In order to redirect the funds, the Board would need to rescind its action of April 24, 2007 (12) and instead adopt retirement contribution rates for Fiscal Year 2007-08 as recommended by SDCERA's actuary, resulting in a rate of 21.49% for General Members and 29.87% for Safety members. Further, in order to pay down outstanding pension obligation bond balances, additional appropriations would be required in the Fiscal Year 2007-08 budget for the Pension Obligation Bond debt service fund. Should the Board approve recommendation 2.b., the Board is asked to refer the matter of the additional appropriations to budget deliberations. Approval at that time would require a 4/5ths vote in accordance with Government Code section 29064 (b) because the proposed increase is being brought forward after the close of public hearings on the budget.

SUBJECT: REVIEW OF SDCERA BOARD OF RETIREMENT ACTIONS REGARDING RETIREE HEALTH CARE BENEFITS, AND CONSIDERATION OF COUNTY RETIREMENT FUNDING PROPOSALS (Districts: All)

Nature of the Respective Actions by the Board of Supervisors and the Retirement Board

Both the Board of Supervisors and the BOR are independent and separate official public bodies established pursuant to law. Each Board has the duty and responsibility to exercise independent judgment and authority in making official decisions on behalf of the public entity it represents. Should the Board of Supervisors approve recommendation number 2.b. in this letter, both Boards take such separate actions with the full understanding and intent that each body's respective actions constitute the exercise of its independent judgment and authority, and that no agreement between the Boards is intended or created by virtue of these actions. It is hereby confirmed that each Board shall not be bound or constrained to take different actions now or in the future because the intent of both Boards is that there is no agreement created by these actions.

Linkage to the County of San Diego Strategic Plan

These actions are aligned with the Required Disciplines of Fiscal Stability and Accountability/Transparency included in the County of San Diego's Strategic Plan for 2006-2011. Adoption of this resolution and the associated actions will support the discipline of Fiscal Stability by ensuring that the County has the resources necessary to fulfill our obligations to the citizens we serve. These actions also support the discipline of Accountability/Transparency through the implementation of GASB 45 standards as part of the County's reporting on the expenditure of public funds.

Respectfully,



WALTER F. EKARD
Chief Administrative Officer

ATTACHMENTS:

Attachment A – May 3, 2007 Actions of the SDCERA Board of Retirement: Policy Changes for Health Allowance, Pension Supplement, STAR COLA and Excess Earnings

SUBJECT: REVIEW OF SDCERA BOARD OF RETIREMENT ACTIONS REGARDING
RETIREE HEALTH CARE BENEFITS, AND CONSIDERATION OF COUNTY
RETIREMENT FUNDING PROPOSALS (Districts: All) **COUNTY OF SAN DIEGO
BOARD OF SUPERVISORS**

AGENDA ITEM INFORMATION SHEET 2017 JUN 11 AM 11:18

CONCURRENCE(S)

COUNTY COUNSEL REVIEW

Written Disclosure per County Charter
Section 1000.1 Required

ajs
☒ Yes
☐ Yes

THOMAS J. PASTUSZKA
CLERK OF THE BOARD
OF SUPERVISORS

☐ No

GROUP/AGENCY FINANCE DIRECTOR

☐ Yes

☒ N/A

CHIEF FINANCIAL OFFICER

Requires Four Votes

De
☒ Yes
☐ Yes

☐ N/A
☐ No

**GROUP/AGENCY INFORMATION
TECHNOLOGY DIRECTOR**

☐ Yes

☒ N/A

COUNTY TECHNOLOGY OFFICE

☐ Yes

☒ N/A

DEPARTMENT OF HUMAN RESOURCES

☐ Yes

☒ N/A

Other Concurrence(s):

ORIGINATING DEPARTMENT: Finance and General Government Group

CONTACT PERSON(S):

Tracy Sandoval

Name

619-531-5413

Phone

619-531-5209

Fax

MS A-5

Mail Station

Tracy.Sandoval@sdcounty.ca.gov

E-mail

William Smith

Name

619-531-4895

Phone

619-531-6005

Fax

MS A-12

Mail Station

William.Smith@sdcounty.ca.gov

E-mail

AUTHORIZED REPRESENTATIVE:

Donald F. Steuer

DONALD F. STEUER

SUBJECT: REVIEW OF SDCERA BOARD OF RETIREMENT ACTIONS REGARDING
RETIREE HEALTH CARE BENEFITS, AND CONSIDERATION OF COUNTY
RETIREMENT FUNDING PROPOSALS (Districts: All)

AGENDA ITEM INFORMATION SHEET
(continued)

PREVIOUS RELEVANT BOARD ACTIONS:

April 24, 2007 (12) Employer and Employee Retirement System Contribution Rates for Fiscal
Year 2007-08

December 5, 2006 (13) Proposed Changes to Retiree Health Benefits

February 26, 2002 (15) Adoption of Enhancements to Retirement Benefits

June 20, 2000 (24) Funding of Retiree Health Benefits

BOARD POLICIES APPLICABLE:

N/A

BOARD POLICY STATEMENTS:

N/A

CONTRACT AND/OR REQUISITION NUMBER(S):

N/A

POLICY CHANGES FOR HEALTH ALLOWANCE, PENSION SUPPLEMENT, STAR COLA and EXCESS EARNINGS

I. HEALTH ALLOWANCE FOR TIER I AND TIER II MEMBERS

- Continue paying the non-taxable health allowance to Tier I & Tier II members using the existing eligibility criteria.
- The benefit would continue at today's level of benefit, which for both Medicare eligible and non-Medicare eligible would be a maximum benefit of \$400.
- The County will pre-fund this benefit using the 401(h) vehicle.
- The County waives crediting the County Contribution Reserve with excess earnings for County ARC contributions to the 401(h).
- The Board of Retirement may credit the county contribution reserve under the conditions outlined in SDCERA's current excess earning policy to the extent the County makes payments that exceed the ARC payment.
- If at any time the county stops directing contributions to the 401h account, the BOR will continue the current 401(h) health benefits policy pursuant to the BOS and BOR respective 2000 resolutions.

II. PENSION SUPPLEMENT FOR TIER A MEMBERS

- Provide between a \$200 to a \$400 taxable, supplemental pension benefit to Tier A retirees.
- The BOR will review the ancillary benefits allowance policy(ies) on an annual basis.
- Current projections put retiree health reserve, where pension supplement would be paid from, lasting till 2017.
- Five year funding of the Tier A benefit is maintained.

III. STAR-COLA

- Pre-fund the \$70.5 million STAR COLA liability using the existing STAR COLA Reserve estimated to be \$44.0 million at June 30, 2007. Use Excess Earnings to fund the balance.

IV. EXCESS EARNING POLICY

- Excess Earnings Policy - After crediting the mandatory reserves with the assumed rate of interest, excess earnings would be available as follows:
 - Funded ratio below 90%: all excess earnings will be used to fund the pension liability.

- Funded ratio in excess of 100% to 115%: 50% of excess earning will be placed in the contingency reserve (rainy day account) and 50% will be available at the discretion of the BOR.
- If the funded ratio exceeds 115%, the BOR has total discretion as to use of excess earnings.
- In the event the amortization of the unfunded liability is a credit, the BOR will require the County to contribute the full service cost for that year.
- The Excess Earnings Policy will be effective July 1, 2007 and will be reviewed annually.

Resolution No.

Dated: June 19, 2007

AMENDED RESOLUTION NO. 06-229 PROVIDING DIRECTIONS TO THE CHIEF FINANCIAL OFFICER REGARDING THE DESIGNATION OF THE COUNTY'S CONTRIBUTION TO THE 401(h) ACCOUNT MAINTAINED BY THE SAN DIEGO COUNTY EMPLOYEES RETIREMENT ASSOCIATION

WHEREAS, in 1974, the Board of Retirement of the San Diego County Employees Association ("SDCERA") began to pay, on a discretionary, non-vested basis, health care benefits for retired members solely from statutorily defined "excess earnings," and subject to eligibility requirements and maximum payment amounts as determined by the Board of Retirement; and

WHEREAS, in response to requirements contained in the United States Internal Revenue Code, on June 20, 2000, and June 1, 2000, respectively, the Board of Supervisors of the County of San Diego ("County") (Resolution No. 00-212) and the Board of Retirement of the San Diego County Employees Retirement Association ("SDCERA") adopted resolutions ("401(h) resolutions") making Government Code section 31592.4 applicable within the County of San Diego; and

WHEREAS, Government Code section 31592.4 provides that adoption of the 401(h) resolutions requires SDCERA under the limitations set forth in that section to treat available excess earnings as contributions by the County to the retirement fund to the extent that in the immediately succeeding fiscal year the County "pays for or otherwise makes reimbursement of health benefits" for retired SDCERA members; and

WHEREAS, pursuant to Internal Revenue Code section 401(h), the County may annually designate up to 25% of its normal cost contribution to SDCERA to be placed into the 401(h) account established by SDCERA for purposes of paying for health benefits of retired members; and

WHEREAS, Section 7 of the County's 401(h) resolution provides:

"No party, including any existing or future County employee, retiree, spouse or dependent, shall have any vested rights, contractual rights or other rights in or to any retiree health benefits or payment or subsidy for any such benefits, nor shall any such person or SDCERA have any such rights to have the County contribute toward the paying or subsidizing of the cost of any retiree health benefits provided by SDCERA under the 401(h) Account or otherwise. By making this contribution to the 401(h) Account for the 2000-01 Fiscal Year, the County in no way obligates itself to contribute to the 401(h) Account in the future. For any subsequent fiscal year, the Board of Supervisors may modify, suspend, or terminate, at any time and without any limitation, its decision to contribute to the 401(h) Account. This modification, suspension or termination may

occur even if it may affect any employee first hired prior to the date of such modification, suspension or termination, any person who retired prior to such modification, suspension or termination, and/or any person who became a spouse or dependent of an employee or retiree prior to such modification, suspension or termination;" and,

WHEREAS, Section 4 of SDCERA's 401(h) resolution provides:

"No Vested Rights. The adoption of this Resolution shall not grant to any party, including any existing or future County employees, retiree spouse or dependent, any vested rights, contractual rights or other rights in or to any retiree health benefits or payment or subsidy for any such benefits, nor shall any such person or SDCERA have any such any such rights to have the County contribute toward the paying or subsidizing the cost of any retiree health benefits provided by SDCERA under the 401(h) Account or otherwise. The 401(h) Account and 401(h) Health Benefits Policy may be modified, suspended or terminated at any time and for any reason by action of the Board of Retirement. This modification, suspension or termination may occur even if it may affect any employee first hired prior to the date of such modification, suspension or termination, any person who retired prior to such modification, suspension or termination, and/or any person who became a spouse or dependent of an employee or retiree prior to such modification, suspension or termination;" and

WHEREAS, on February 26, 2002, the Board of Supervisors adopted Resolution No. 02-041 making applicable to safety members of SDCERA who retired on or after March 8, 2002, Government Code section 31664.1, which provided them enhanced retirement allowances; and

WHEREAS, on February 26, 2002, the Board of Supervisors adopted Resolution No. 02-044 making applicable to general members of SDCERA, who did not opt out and who retired on or after March 8, 2002, Government Code section 31676.17, which provided them enhanced retirement allowances; and

WHEREAS, SDCERA members covered by Government Code sections 31664.1 and 31676.17 are collectively referred to as "Tier A" Members; and

WHEREAS, members retiring prior to March 8, 2002, or who opted out of Tier A, are referred to herein as Tier I and Tier II Members; and

WHEREAS, commencing Fiscal Year 2007-2008, under the provisions of Governmental Accounting Standards Board Statement 45, ("GASB 45"), the County will be required to report in its financial statements as a long term liability, even though not vested, the present value of future health care costs, including a portion representing the costs not previously funded; and

WHEREAS, it is reasonably expected that accounting for health care costs pursuant to GASB 45, but not funding them, will result in a negative effect on the

County's bond rating and substantially affect the County's ability to fund other programs unless measures are taken to the reduce liability; and

WHEREAS, this resolution provides direction to the County Chief Financial Officer to designate a portion of the County's annual contribution to SDCERA to be placed into the 401(h) account only if SDCERA has adopted a policy limiting health care benefit payments to Tier I and Tier II Members and excluding Tier A Members whether active or retired, and additionally, that qualifications to receive payments and maximum payment amounts to Tier I and Tier II Members have not been revised to increase the level of benefits to Tier I and Tier II Members; and

WHEREAS, adoption of this resolution will result either in a substantial reduction or elimination of the liability the County must report under GASB 45; and

WHEREAS, on May 3, 2007, SDCERA's Board of Retirement adopted a policy entitled "Policy Changes for Health Allowance, Pension Supplement, STAR COLA and Excess Earnings" (the "SDCERA Policy") (see Attachment 1), contingent upon the County making contributions to the 401(h) account for Tier I and II retirees without SDCERA crediting the County contribution reserve with excess earnings; and

WHEREAS, the SDCERA Policy includes the adoption of a policy on the disposition of excess earnings as set forth in Section IV of the SDCERA Policy (hereafter referred to as the "Excess Earning Policy"); and

WHEREAS, in view of the SDCERA Policy, the Board of Supervisors is willing to amend its Resolution 06-229 to provide for the County to make contributions to the 401(h) account for Tier I and II retirees without SDCERA crediting the County contribution reserve with excess earnings, subject to the contingency provisions indicated in this Resolution:

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. Designation to 401(h) Account. On or before July 31 of each year, the County Chief Financial Officer is directed, in accordance with Government Code section 31592.4, Resolution Number 00-212 and Internal Revenue Code section 401(h), to designate a portion of the County's contribution to the retirement fund to be placed in the SDCERA 401(h) account subject to the requirements set forth in Section 2, below.

1.1 Alternative Designation to the 401(h) Account. Notwithstanding Section 1 above, the Chief Financial Officer is authorized to make the 401(h) account contribution required under Section 1, by designating contributions on a monthly, quarterly, or other periodic basis, during a fiscal year, subject to the requirements set forth in Sections 2, 2.1, 3 and 3.1 below.

2. Requirements for Designation. The designation by the Chief Financial Officer of a portion of the County's contribution for purposes of placement in the 401(h) account shall occur only after the adoption by SDCERA of a policy providing for payment for health care costs, on a non-vested basis, to Tier I and Tier II Members only and not to Tier A Members whether active or retired, and confirmation by the Chief Financial Officer that SDCERA's health benefit policies covering qualifications to receive payment and maximum amounts have not been revised to increase the level of health benefits, from the level existing as of the adoption date of this Resolution, for Tier I and Tier II Members.

2.1 County Contribution Without SDCERA Credit; Contingency.

Notwithstanding the provisions of Resolution No. 00-212, the Chief Financial Officer is authorized to make the County's contributions to the 401(h) account, pursuant to Sections 1, 1.1, and 2 above, without SDCERA crediting the retirement contribution reserve with excess earnings, contingent upon SDCERA's Excess Earnings Policy (or any excess earnings policy formula that provides an increased level of excess earnings being credited to the pension liability) applying, on a continuing basis, to any distribution of excess earnings in accordance with SDCERA's action of May 3, 2007.

3. Time Limitations. If by June 30 of each year, SDCERA has not adopted or maintained the policy described in Section 2 above, and/or SDCERA has increased the level of health benefits, from the level existing as of the adoption of this Resolution, for Tier I and/or Tier II Members, the Chief Financial Officer is directed to not make the designation described in Section 1 above.

3.1 Conditions; Suspension of 401(h) Contribution.

- a. If SDCERA increases the level of health benefits for Tier I and II retirees from the levels existing as of the adoption of this Amended Resolution 06-229, the Chief Financial Officer is directed to suspend the designation of contributions to be placed in the 401(h) account until such time that SDCERA re-establishes the health benefit for Tier I and II retirees at levels no greater than the levels in place as of the time this Amended Resolution 06-229 is adopted.
- b. If SDCERA changes the Excess Earnings Policy formula that decreases the level of excess earnings credited to the pension liability, the Chief Financial Officer is directed to suspend the designation of contributions to be placed in the 401(h) account until such time that SDCERA re-establishes the Excess Earnings Policy formula to provide at least the same or greater level of excess earnings being credited to the pension liability as authorized by the Excess Earnings Policy adopted by the BOR on May 3, 2007.

4. No Vested Rights. No party, including any existing or future County employee, retiree, spouse or dependent, shall have any vested rights, contractual rights or other rights in or to any retiree health benefits or payment or subsidy for any such benefits, nor shall any such person or SDCERA have any such rights to have the County contribute toward the paying or subsidizing of the cost of any retiree health benefits provided by

SDCERA under the 401(h) Account or otherwise. If the County makes a contribution to the 401(h) Account for the 2007-08 Fiscal Year, the County in no way obligates itself to contribute to the 401(h) Account in the future. For any subsequent fiscal year, the Board of Supervisors may modify, suspend, or terminate, at any time and without any limitation, its decision to contribute to the 401(h) Account. This modification, suspension or termination may occur even if it may affect any employee first hired prior to the date of such modification, suspension or termination, any person who retired prior to such modification, suspension or termination, and/or any person who became a spouse or dependent of an employee or retiree prior to such modification, suspension or termination.

5. Nature of Respective Actions by the Board of Supervisors and the Retirement Board. The Board of Supervisors and the Board of Retirement are independent and separate official public bodies. Each board has the duty and responsibility to exercise its independent judgment and authority in making official decisions on behalf of the public entity it represents. The action of the Board of Supervisors in adopting this resolution and any action taken by the Board of Retirement with regard to the requirements set forth in section 2 of this resolution are taken with the full understanding and intent that each body's respective actions constitute the exercise of its independent judgment and authority and that no agreement between the Boards is intended or created by virtue of these actions. It hereby confirmed that each Board shall not be constrained from taking different actions now or in the future.

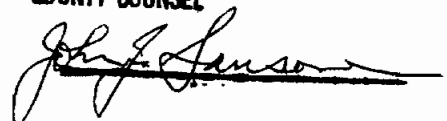
PASSED AND ADOPTED THIS _____ DAY OF _____, 2007, by the following vote:

AYES:

NOES:

ABSENT

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL



Resolution No.

INFORMATION COPY

Dated: June 19, 2007

AMENDED RESOLUTION NO. 06-229 PROVIDING DIRECTIONS TO THE CHIEF FINANCIAL OFFICER REGARDING THE DESIGNATION OF THE COUNTY'S CONTRIBUTION TO THE 401(h) ACCOUNT MAINTAINED BY THE SAN DIEGO COUNTY EMPLOYEES RETIREMENT ASSOCIATION

WHEREAS, in 1974, the Board of Retirement of the San Diego County Employees Association ("SDCERA") began to pay, on a discretionary, non-vested basis, health care benefits for retired members solely from statutorily defined "excess earnings," and subject to eligibility requirements and maximum payment amounts as determined by the Board of Retirement; and

WHEREAS, in response to requirements contained in the United States Internal Revenue Code, on June 20, 2000, and June 1, 2000, respectively, the Board of Supervisors of the County of San Diego ("County") (Resolution No. 00-212) and the Board of Retirement of the San Diego County Employees Retirement Association ("SDCERA") adopted resolutions ("401(h) resolutions") making Government Code section 31592.4 applicable within the County of San Diego; and

WHEREAS, Government Code section 31592.4 provides that adoption of the 401(h) resolutions requires SDCERA under the limitations set forth in that section to treat available excess earnings as contributions by the County to the retirement fund to the extent that in the immediately succeeding fiscal year the County "pays for or otherwise makes reimbursement of health benefits" for retired SDCERA members; and

WHEREAS, pursuant to Internal Revenue Code section 401(h), the County may annually designate up to 25% of its normal cost contribution to SDCERA to be placed into the 401(h) account established by SDCERA for purposes of paying for health benefits of retired members; and

WHEREAS, Section 7 of the County's 401(h) resolution provides:

"No party, including any existing or future County employee, retiree, spouse or dependent, shall have any vested rights, contractual rights or other rights in or to any retiree health benefits or payment or subsidy for any such benefits, nor shall any such person or SDCERA have any such rights to have the County contribute toward the paying or subsidizing of the cost of any retiree health benefits provided by SDCERA under the 401(h) Account or otherwise. By making this contribution to the 401(h) Account for the 2000-01 Fiscal Year, the County in no way obligates itself to contribute to the 401(h) Account in the future. For any subsequent fiscal year, the Board of Supervisors may modify, suspend, or terminate, at any time and without any limitation, its decision to contribute to the 401(h) Account. This modification, suspension or termination may

occur even if it may affect any employee first hired prior to the date of such modification, suspension or termination, any person who retired prior to such modification, suspension or termination, and/or any person who became a spouse or dependent of an employee or retiree prior to such modification, suspension or termination;" (emphasis added) and,

WHEREAS, Section 4 of SDCERA's 401(h) resolution provides:

"No Vested Rights. The adoption of this Resolution shall not grant to any party, including any existing or future County employees, retiree spouse or dependent, any vested rights, contractual rights or other rights in or to any retiree health benefits or payment or subsidy for any such benefits, nor shall any such person or SDCERA have any such any such rights to have the County contribute toward the paying or subsidizing the cost of any retiree health benefits provided by SDCERA under the 401(h) Account or otherwise. The 401(h) Account and 401(h) Health Benefits Policy may be modified, suspended or terminated at any time and for any reason by action of the Board of Retirement. This modification, suspension or termination may occur even if it may affect any employee first hired prior to the date of such modification, suspension or termination, any person who retired prior to such modification, suspension or termination, and/or any person who became a spouse or dependent of an employee or retiree prior to such modification, suspension or termination;" (emphasis added) and

WHEREAS, on February 26, 2002, the Board of Supervisors adopted Resolution No. 02-041 making applicable to safety members of SDCERA who retired on or after March 8, 2002, Government Code section 31664.1, which provided them enhanced retirement allowances; and

WHEREAS, on February 26, 2002, the Board of Supervisors adopted Resolution No. 02-044 making applicable to general members of SDCERA, who did not opt out and who retired on or after March 8, 2002, Government Code section 31676.17, which provided them enhanced retirement allowances; and

WHEREAS, SDCERA members covered by Government Code sections 31664.1 and 31676.17 are collectively referred to as "Tier A" Members; and

WHEREAS, members retiring prior to March 8, 2002, or who opted out of Tier A, are referred to herein as Tier I and Tier II Members; and

WHEREAS, commencing Fiscal Year 2007-2008, under the provisions of Governmental Accounting Standards Board Statement 45, ("GASB 45"), the County will be required to report in its financial statements as a long term liability, even though not vested, the present value of future health care costs, including a portion representing the costs not previously funded; and

WHEREAS, it is reasonably expected that accounting for health care costs pursuant to GASB 45, but not funding them, will result in a negative effect on the

County's bond rating and substantially affect the County's ability to fund other programs unless measures are taken to the reduce liability; and

WHEREAS, this resolution provides direction to the County Chief Financial Officer to designate a portion of the County's annual contribution to SDCERA to be placed into the 401(h) account only if SDCERA has adopted a policy limiting health care benefit payments to Tier I and Tier II Members and excluding Tier A Members whether active or retired, and additionally, that qualifications to receive payments and maximum payment amounts to Tier I and Tier II Members have not been revised to increase the level of benefits to Tier I and Tier II Members; and

WHEREAS, adoption of this resolution will result either in a substantial reduction or elimination of the liability the County must report under GASB 45; and

WHEREAS, on May 3, 2007, SDCERA's Board of Retirement adopted a policy entitled "Policy Changes for Health Allowance, Pension Supplement, STAR COLA and Excess Earnings" (the "SDCERA Policy") (see Attachment 1), contingent upon the County making contributions to the 401(h) account for Tier I and II retirees without SDCERA crediting the County contribution reserve with excess earnings; and

WHEREAS, the SDCERA Policy includes the adoption of a policy on the disposition of excess earnings as set forth in Section IV of the SDCERA Policy (hereafter referred to as the "Excess Earning Policy"); and

WHEREAS, in view of the SDCERA Policy, the Board of Supervisors is willing to amend its Resolution 06-229 to provide for the County to make contributions to the 401(h) account for Tier I and II retirees without SDCERA crediting the County contribution reserve with excess earnings, subject to the contingency provisions indicated in this Resolution:

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. Designation to 401(h) Account. On or before July 31 of each year, the County Chief Financial Officer is directed, in accordance with Government Code section 31592.4, Resolution Number 00-212 and Internal Revenue Code section 401(h), to designate a portion of the County's contribution to the retirement fund to be placed in the SDCERA 401(h) account subject to the requirements set forth in Section 2, below.

1.1 Alternative Designation to the 401(h) Account. Notwithstanding Section 1 above, the Chief Financial Officer is authorized to make the 401(h) account contribution required under Section 1, by designating contributions on a monthly, quarterly, or other periodic basis, during a fiscal year, subject to the requirements set forth in Sections 2, 2.1, 3 and 3.1 below.

2. Requirements for Designation. The designation by the Chief Financial Officer of a portion of the County's contribution for purposes of placement in the 401(h) account shall occur only after the adoption by SDCERA of a policy providing for payment for health care costs, on a non-vested basis, to Tier I and Tier II Members only and not to Tier A Members whether active or retired, and confirmation by the Chief Financial Officer that SDCERA's health benefit policies covering qualifications to receive payment and maximum amounts have not been revised to increase the level of health benefits, from the level existing as of the adoption date of this Resolution, for Tier I and Tier II Members.

2.1 County Contribution Without SDCERA Credit; Contingency.

Notwithstanding the provisions of Resolution No. 00-212, the Chief Financial Officer is authorized to make the County's contributions to the 401(h) account, pursuant to Sections 1, 1.1, and 2 above, without SDCERA crediting the retirement contribution reserve with excess earnings, contingent upon SDCERA's Excess Earnings Policy (or any excess earnings policy formula that provides an increased level of excess earnings being credited to the pension liability) applying, on a continuing basis, to any distribution of excess earnings in accordance with SDCERA's action of May 3, 2007.

3. Time Limitations. If by June 30 of each year, SDCERA has not adopted or maintained the policy described in Section 2 above, and/or SDCERA has increased the level of health benefits, from the level existing as of the adoption of this Resolution, for Tier I and/or Tier II Members, the Chief Financial Officer is directed to not make the designation described in Section 1 above.

3.1 Conditions; Suspension of 401(h) Contribution.

- a. If SDCERA increases the level of health benefits for Tier I and II retirees from the levels existing as of the adoption of this Amended Resolution 06-229, the Chief Financial Officer is directed to suspend the designation of contributions to be placed in the 401(h) account until such time that SDCERA re-establishes the health benefit for Tier I and II retirees at levels no greater than the levels in place as of the time this Amended Resolution 06-229 is adopted.
- b. If SDCERA changes the Excess Earnings Policy formula that decreases the level of excess earnings credited to the pension liability, the Chief Financial Officer is directed to suspend the designation of contributions to be placed in the 401(h) account until such time that SDCERA re-establishes the Excess Earnings Policy formula to provide at least the same or greater level of excess earnings being credited to the pension liability as authorized by the Excess Earnings Policy adopted by the BOR on May 3, 2007.

4. No Vested Rights. No party, including any existing or future County employee, retiree, spouse or dependent, shall have any vested rights, contractual rights or other rights in or to any retiree health benefits or payment or subsidy for any such benefits, nor shall any such person or SDCERA have any such rights to have the County contribute toward the paying or subsidizing of the cost of any retiree health benefits provided by

SDCERA under the 401(h) Account or otherwise. If the County makes a contribution to the 401(h) Account for the 2007-08 Fiscal Year, the County in no way obligates itself to contribute to the 401(h) Account in the future. For any subsequent fiscal year, the Board of Supervisors may modify, suspend, or terminate, at any time and without any limitation, its decision to contribute to the 401(h) Account. This modification, suspension or termination may occur even if it may affect any employee first hired prior to the date of such modification, suspension or termination, any person who retired prior to such modification, suspension or termination, and/or any person who became a spouse or dependent of an employee or retiree prior to such modification, suspension or termination.

5. Nature of Respective Actions by the Board of Supervisors and the Retirement Board. The Board of Supervisors and the Board of Retirement are independent and separate official public bodies. Each board has the duty and responsibility to exercise its independent judgment and authority in making official decisions on behalf of the public entity it represents. The action of the Board of Supervisors in adopting this resolution and any action taken by the Board of Retirement with regard to the requirements set forth in section 2 of this resolution are taken with the full understanding and intent that each body's respective actions constitute the exercise of its independent judgment and authority and that no agreement between the Boards is intended or created by virtue of these actions. It hereby confirmed that each Board shall not be constrained from taking different actions now or in the future.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2007~~6~~, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

